IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

TUESDAY, THE FIRST DAY OF FEBRUARY
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE G. BIKSHAPATHY

And

THE HON'BLE MR JUSTICE P.S.NARAYANA

WRIT PETITION NO : 15285 of 2002

Between**:**

1. R.Ramachandra Rao, Son of late R.Battam Setty, Junior Assistant, Office of the Commercial Tax Department, Annapanthi, East Godavari District.
2. K.Rajarathnam, Son of late Krishna Swamy, Junior Assistant, Office of the Commercial Tax Department, Annapanthi, East Godavari District.

..... PETITIONERS

AND

1. The Commissioner of Commercial Taxes, Government of Andhra Pradesh, Nampally, Hyderabad.
2. The Deputy Commissioner of Commercial Taxes, Kakinada Division, Kakinada, East Godavari District.
3. Mohd.Mastan, Senior Assistant, Office of the Commercial Tax Officer, Bhimavaram, West Godavari District.

4. S.V.Ramanamurthy, Senior Assistant, Office of the Commercial

Tax Officer, Tadepalligudem, West Godavari District.

5. G.Ch.V.Prasad, Senior assistant, Office of the Commercial

Tax Officer, Nidadavolu, West Godavari District.

6. K.N.V.Parthasarathi, Junior Assistant, Office of the Commercial

Tax Officer, Eluru, West Godavari District.
7. M.Kasi Visweswara Rao, Junior Assistant, Commercial Tax

Check Post, Kovvur, West Godavari District.

8. S.S.Ramachandra Murthy, Junior Assistant, Commercial Tax

Check Post, Kovvur, West Godavari District.

9. K.S.Iyengar, Junior Assistant, Commercial Tax Check Post, Kovvur, West Godavari District.

10. A.Madhusudhan Rao, Junior Assistant, Commercial Tax Check Post, Kovvur, West Godavari District.

11. T.Nagabhushanam, Junior Assistant, Commercial Tax Check Post, Kovvur, West Godavari District.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue an appropriate Writ, order of direction more particularly of Writ of Certiorari calling for the records relating to the 2nd respondent herein in Ref.E2/583/2000, dated 11.2.2000 and the consequential orders of the Hon'ble A.P. Administrative Tribunal passed in O.A.No.1488 of 2000 and batch dated 24.4.2002 and quash the same as illegal, arbitrary and contrary to law.

Counsel for the Petitioner: MRS.V. SUJATHA.

Counsel for the Respondent Nos. 3 to 5, 7, 8 and 11: MR.A.SURYANARAYANA MURTHY.

Counsel for the Respondents 1 and 2: G.P. FOR SERVICES-II.

Counsel for the Respondents 6, 9 and 10: None appeared.

The Court made the following:

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ORAL ORDER: (per GB.J.)

The Writ Petition is filed assailing the order passed by A.P. Administrative Tribunal (for brevity Tribunal) in O.A.No.1488 of 2000, dated 24.4.2002.

2. The matter relates to fixation of *inter se* seniority in the cadre of Junior Assistants in the Commercial Tax Department. The petitioner were initially appointed in Irrigation Department as Junior Assistants and joined the said post on 4.12.1976. Their probation was also declared and thus they were approved probationers in the Irrigation Department. While so, they made an application for transfer to Commercial Tax Department in 1986. Thereafter the Commercial Tax Department constituted a Screening Committee, which selected some of the candidates who gave their willingness to join the Commercial Tax Department, and in that regard the Commissioner of Taxes in Ref.No.E3/1727/85 issued orders, dated 22.7.1986 accepting the transfer of the persons in the category of Junior Assistants and Typists as mentioned in the said Notification on the condition that they shall take last rank below the probationers and approved probationers working in the Commercial Tax Department. Accepting to those conditions, the petitioners and others joined the Commercial Tax Department in 1986. But however, after joining the Department, they started raising dispute with regard to the fixation of seniority.

It is their claim that their seniority should be protected and they should be placed above the probationers and below the approved probationers on the ground that as on the date when they were transferred to Commercial Tax Department, they were approved probationers in their parent Department, viz., Irrigation Department, and therefore the same place shall be continued in the Commercial Tax Department and accordingly they requested the Department to place them below the approved probationers and above the probationers. When a show cause notice was issued in 1995 placing the petitioners below the probationers and approved probationers, the petitioners filed OA.No.695 of 1996. Pending the said OA., the case of the petitioners was considered by the Department and placed the petitioners above the probationers and below the approved probationers in the seniority list of Junior Assistants. Aggrieved by the said action, the departmental candidates in Commercial Tax Department in Junior Assistant cadre filed the present OA and the same was allowed. Aggrieved by the said order, the present Writ Petition has been filed by the petitioners.

3. The learned counsel for the petitioners submit that the seniority of the petitioners has to be protected by virtue of Rule 16(1) of A.P. Ministerial Service Rules (for short the Rules) and therefore the order of the Tribunal is illegal and contrary to the statutory rules.

4. The learned counsel for respondents 3 to 5, 7, 8 and 11 submits that the very condition of transfer is that the petitioners shall take last rank below the probationers and approved probationers and therefore they cannot seek better seniority after joining the Department. Secondly also it is submitted that the Government in such a situation issued Memo bearing No.4626/SS1/85-3, dated 2.5.1986 as to the method and manner of fixation of seniority in cases of transfer from one Department to another Department. Further he also submits that it is not permissible to the petitioners to raise such a contention in view of the Presidential Order and that they have to take only last rank, as they joined the other Department as Junior Assistant, which is a District level post. Further, the learned counsel also would submit that this matter is also covered by a decision of this Court reported in S.V.P.SARVANI AND ANOTHER vs. GOVERNMENT OF ANDHRA PRADESH[1].

5. We have also heard the learned Government Pleader for Services-II for respondents 1 and 2.

6. The issue that arises for consideration is whether the petitioners are entitled to be fixed their seniority below the approved probationers and above the probationers as ordered by the Department in the cadre of Junior Assistants.

7. The narration of the events as to how the petitioners joined the post are already stated supra. It is true that the petitioners are approved probationers when they joined the Commercial Tax Department. But the question that calls for consideration is whether they should take last rank below the approved probationers and the probationers or whether they should be fixed below the approved probationers.

8. For this purpose, we need not go into the Rules also. Suffice it to say that the very condition of transfer as stipulated by the Commissioner of Commercial Taxes dated 22.7.1986 is that the petitioners shall take last rank below the probationers and approved probationers. While accepting the transfer of the petitioners from Irrigation Department to Commercial Tax Department, the following conditions are fixed by the Commissioner of Commercial Taxes:-

1. They should take last rank below the probationers and approved probationers working in the department.

2. They should give a declaration that they are coming on transfer at their request without claiming any seniority and promotion.

Having given such an undertaking and joined the post, it is not open for the petitioners to resile from the commitment and seek the alleged protection under Rule 16(1) of the Rules. Even assuming such a Rule protects the interest of the petitioners, when the petitioners have waived their interest, which is assumed to be available to them under Rule 16(1) of the Rules, they cannot be allowed to resile from the undertaking and claim the seniority over the probationers and get them fixed below the approved probationers. Such a stand is not open for the petitioners more especially when the undertaking was given and they are bound by the conditions of transfer dated 22.7.1986. Under those circumstances, we do not find that the order of the Tribunal suffers from illegality or irregularity.

9. Accordingly the Writ Petition is dismissed. No costs.

G.BIKSHAPATHY, J.

1st February, 2005.

---------- P.S.NARAYANA, J.

SSR

..... REGISTRAR

// TRUE COPY //

SECTION OFFICER

To

1. The Commissioner of Commercial Taxes, Government of Andhra Pradesh, Nampally, Hyderabad.
2. The Deputy Commissioner of Commercial Taxes, Kakinada Division, Kakinada, East Godavari District.
3. The Registrar, A.P. Administrative Tribunal, Hyderabad
4. 2 CCs to G.P. for Services-II, High Court of A.P. Hyderabad.

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